

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

– against –

ALFONSO PHILIS,

Defendant.

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WEINSTEIN, *Senior District Judge*:

The Court of Appeals for the Second Circuit has remanded the case, on the government's motion and with defendant's consent, for possible resentencing following *United States v. Booker*, 125 S. Ct. 738 (2005). "Because the sentencing error at issue was not preserved for appellate review, we remand for further proceedings in conformity with this Court's decision in *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005)." May 25, 2005 U.S.C.A. Mandate.

Pursuant to the remand the defendant may move for resentence. The Court of Appeals has advised that: "A remand . . . that authorizes a district judge to consider whether to resentence and that permits resentencing should include an opportunity for a defendant to avoid resentencing by promptly notifying the district court that resentencing will not be sought." *Crosby*, 397 F.3d at 118.

Pursuant to this suggestion, a motion for resentencing shall be made by defendant within thirty days of this order. Failure to so move will be considered a decision not to seek resentencing, unless just cause for delay is shown.

The motion will be heard with both the defendant and his retained counsel present in court. If a resentence is ordered, the defendant and counsel will appear again for a separate

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MEMORANDUM & ORDER
03-CR-919 (gaw)

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proceeding.

The motion for resentencing shall be heard on July 14, 2005 at 11:00 a.m. The parties shall decide on a briefing schedule and inform Case Coordinator Ms. June Lowe.

SO ORDERED.

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Jack B. Weinstein
Senior U.S.D.J.

Dated: June 21, 2005
Brooklyn, New York